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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES

In re:
DDC GROUP, INC.,

Debtor.

Chapter 11
Case No:2:18-bk-17029-BB
Adversary Case No:18-ap-01312-BB

DDC GROUP, INC.,

Plaintiff,
vs.

RDY HOLDINGS LLC, a New York Limited
Liability Company; YES LENDER, LLC, a
business entity form unknown; GTR SOURCE
LLC, a New Jersey Limited Liability
Company; YELLOWSTONE CAPITAL
WEST LLC, a New York Limited Liability
Company; RICHMOND CAPITAL GROUP,
LLC, a New York Limited Liability Company,

Defendants.

DEFENDANT YESLENDER LLC'S NOTICE
OF MOTION AND MOTION FOR ORDER TO
DISMISS PLAINTIFFS FIRST AMENDED
COMPLAINT FOR DECLARATORY RELIEF
AND TO DETERMINE THE NATURE,
EXTENT AND VALIDITY OF JUDGMENT
LIENS MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT

STATUS CONFERENCE

Date:03-05-2019

Time: 02:00 pm

HEARING

Date:03-05-2019

Time: 02:00 pm

Location: 255 E Temple St., Crtrm 1539, Los
Angeles, CA 90012

TO THE HONORABLE SHERI BLUEBOND, UNITED STATES BANKRUPTCY
JUDGE AND ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure (F.R.C.P.)
12(b)(1) and (6) and Federal Rules of Bankruptcy Procedure (F.R.B.P.) Rule 7012. Defendant

1 YesLender LLC will and hereby does move for an order dismissing the complaint of Plaintiff
2 DDC Group Inc. Further, the Defendant moves to strike certain allegations of the Complaint
3 pursuant to F.R.C.P. Rule 12(f) and F.R.B.P. Rule 7012.

4 Defendant YesLender LLC, files this motion to dismiss Plaintiff's complaint for
5 declaratory relief and to determine nature, extent and validity of judgment liens.

6 This Motion is noticed to be heard at 2PM on 03-05-2019, or as soon as may be heard
7 thereafter, in Courtroom 1539 of the United States Bankruptcy Court, Central District of
8 California, Los Angeles Division, Edward R. Roybal Federal Building and Courthouse, 255 E.
9 Temple Street, Los Angeles, CA 90012, before the Honorable Sheri Bluebond. Local Bankruptcy
10 Rule 9013-1(f) requires that any opposition to this Motion be filed and served no later than 14
11 days before the hearing date.

12 Plaintiff, DDC GROUP INC is suing for declaratory relief and to determine the nature,
13 extent and validity of judgment liens. Plaintiff relies upon FRBP 7001(2) for the courts authority
14 to determine the validity, priority, or extent of a lien or other interest in property, FRBP Rule
15 7001(2).

16 This Motion is based on this Notice of Motion, the attached Memorandum of Points and
17 Authorities, the accompanying Request for Judicial Notice, the complete files and records in this
18 matter, the argument of counsel, and such other and further matters as this Court may consider
19 before or at the hearing on this Motion.

20 Date 2/12/2019


21 
22 _____
23 Larry Webb
24 Attorney for
25 YesLender LLC
26

Table of Contents

MEMORANDUM OF POINTS AND AUTHORITIES	5
PARTIES	5
PLAINTIFF’S ISSUES.....	5
PROCEEDINGS	5
THE AMENDED COMPLAINT	5
YESLENDER’S RESPONSE.....	6
STATEMENT OF FACTS	6
GOVERNING LAW.....	7
SISTER STATE JUDGMENT	8
THE PENNSYLVANIA JUDGEMENT CONFESSION OF JUDGMENT COGNOVIT ACTIONEM CLAUSE.....	11
RES JUDICATA ISSUE PRECLUSION CLAIM PRECLUSION FULL FAITH AND CREDIT	13
THE ROOKER-FELDMAN DOCTRINE THERE IS NO SUBJECT MATTER JURISDICTION THE COMPLAINT SHOULD BE DISMISSED, FRBP 12(b)(1).....	15
PLAINTIFF HAS FAILED TO STATE A CAUSE OF ACTION COMPLAINT MUST BE DISMISSED FRCP 12(b)(6)	17
ALL ALLEGATIONS REGARDING YESLENDER LLC MUST BE STRUCK FROM THE COMPLAINT	17
FRBP 12(f).....	17

Cases

<i>Alderman v. Diamant</i> , 7 N.J.L. 197, 198 (1824).....	12
<i>Baker by Thomas v. General Motors Corp.</i> (1998) 522 U.S. 222, 223	14
<i>Bank of America v. Jennett</i> (1999) 77 Cal.App.4th 104, 118	11
<i>Bank of America v. Jennett</i> (App. 3 Dist. 1999) 91 Cal.Rptr.2d 359, 77	8
<i>Capital Trust, Inc. v. Tri-National Development Corp.</i> (2002) 103 Cal.App.4th 824, 829	10
<i>Cooper v. Ramos</i> (9th Cir. 2012) 704 F.3d 772, 777–778.....	16
<i>D. H. Overmyer Co. Inc., of Ohio v. Frick Co.</i> (1972) 405 U.S. 174, 176–178.....	12

1	<i>Hadden v. Rumsey Products, Inc.</i> , 196 F.2d 92, 96 (CA2 1952).....	12
2	<i>In re Mastro</i> (Bankr. W.D. Wash. 2011) 465 B.R. 576, 585.....	18
3	<i>Isbell v. County of Sonoma, supra</i> , 21 Cal.3d at pp. 69–70.....	10
4	<i>Noel v. Hall</i> (9th Cir. 2003) 341 F.3d 1148, 1158.....	17
5	<i>Swarb v. Lennox</i> (1972) 405 U.S. 191, 193–194.....	13
6	Statutes	
7	Cal. Civ. Proc. Code § 1710.40	9
8	Code Civ. Proc., § 1132.....	10
9	Pa.Rule Civ.Proc. 2951(a)	13
10	Other Authorities	
11	<i>Blackstone, Commentaries</i>	12
12	Exhibits	
13	Exhibit "A" Merchant Capital Agreement.....	7
14	Exhibit "B" UCC Financing Statement	8
15	Exhibit "C" Montgomery County Court Judgment	8
16	Exhibit "D" Notice of Entry of Judgement on Sister-State	8
17	Exhibit "E" Disclosure for confession of judgement.....	13
18	Exhibit "F" LASC DOCKET BS173959.....	8
19	Exhibit "G" Transcript 12-11-2018	15

MEMORANDUM OF POINTS AND AUTHORITIES
PARTIES

1. Plaintiff DDC GROUP INC. is a California Corporation and the Debtor entity in the underlying above captioned chapter 11 bankruptcy case.
2. Defendant Yes Lender LLC is a domestic limited liability company located in King of Prussia, PA. YesLender funds all types of businesses in virtually every industry imaginable.

PLAINTIFF'S ISSUES

3. Plaintiff's prayer for judgment asks for:
 - a. a declaration that YesLender's liens are not valid, perfected, or enforceable pre-petition
 - b. a declaration of the Court that YesLenders's liens are limited to the amount actually received by DDC Group.

PROCEEDINGS

4. DDC Group filed its complaint, 2:18-ap-01312-BB on 10-09-2018. Yeslender filed its first Motion to dismiss on 11-08-2018. The Motion was heard on 12-11-2018. This court denied the motion, however this court also ordered DDC Group to amend its complaint by 01-14-2019, and defendants response is to be filed by 02-15-2019. DDC Group filed its amended complaint on 01/14/2014.
5. This responsive motion to dismiss is timely filed under the Court's order dated January 3, 2019, docket 16.

THE AMENDED COMPLAINT

6. A side by side comparison of the First Amended Complaint [FAC] and the originating complaint shows that plaintiff merely added three paragraphs; FAC paragraph 13, 14 and 15. As to Yeslender, only FAC 14 and 15 are applicable. For ease of reference FAC paragraphs 14 & 15 of the FAC are repeated below.

" 14. Defendant YesLender has obtained a sister state judgment in California. The other three defendants with out of state judgments do not have sister state judgments in California. As to the YesLender California Judgment, California

1 law was not followed by YesLender and therefore the judgment should be
2 declared void.

3 California Code of Civil Procedure 1132: (b) A judgment by confession
4 shall be entered only if an attorney independently representing the
5 defendant signs a certificate that the attorney has examined the proposed
6 judgment and has advised the defendant with respect to the waiver of
7 rights and defenses under the confession of judgment procedure and has
8 advised the defendant to utilize the confession of judgment procedure. The
9 certificate shall be filed with the filing of the statement required by Section
10 1133."

11 15. Debtor was not offered the opportunity to have its attorney "examine the
12 proposed judgment" or give it any advice whatsoever. "

13 7. There is also a slight modification in the prayer asking for a declaration as to the amount
14 of allowed claim.

15 8. At the 12-11-2018 hearing on the motion to dismiss the original complaint, the Court
16 raised several questions for the Plaintiff. Those questions appear not have been addressed in the
17 FAC.

18 YESLENDER'S RESPONSE

19 9. At the 12-11-2018 hearing on the motion to dismiss the original complaint, this court
20 opined that the complaint was not an attempt to use this court as a court of appeals. The First
21 Amended Complaint now asks this court to void the Pennsylvania judgement. The FAC is a now
22 a direct attack on the Pennsylvania Judgment, a de facto appeal, and therefore must be dismissed
23 pursuant to FRCP 12(b)(1), (6)

24 10. At the 12-11-2018 hearing on the motion to dismiss the original complaint, this court
25 raised questions about the preclusive effect of the Sister state judgment. This court also asked if
26 there were any California public policy concerns. These questions are addressed below.

27 STATEMENT OF FACTS

28 11. DDC Group and YesLender executed a Merchant Capital Agreement (the "Agreement")
dated January 31, 2018, under which YesLender agreed to purchase a portion of in future

1 receivables. YesLender paid DDC Group \$40,000.00, less certain administrative fees. The
2 value of future receivables to be delivered to YesLender was \$58,000.00, plus fees. The contract
3 language is clear and plain. This is a purchase of accounts receivable.

4 We agree to buy from you (and you agree to sell to us) the amount of
5 future Receivables shown below (the "Amount Sold") in exchange for the
6 Purchase Price shown below. See RJN Exhibit "A" Merchant Capital
7 Agreement. Page 6.

8 12. See Request for Judicial Notice ("RJN") Exhibit "A" Merchant Capital Agreement. Page
9 18.

10 GOVERNING LAW

11 13. Governing Law here is contractual. The parties agreed that the laws of the
12 Commonwealth of Pennsylvania govern the entire relationship between and among the parties.
13 The contractual governing law clause is:

14 e. Governing Law. This Agreement, any transactions it contemplates, the
15 construction of the terms of the Agreement and all transactions, and the
16 interpretation performance and enforcement of the rights and duties of you
17 and us, will be governed by and construed in accordance with the laws of the
18 Commonwealth of Pennsylvania, without regards to conflicts of law
19 principles. The parties agree that the laws of the Commonwealth of
20 Pennsylvania govern the entire relationship between and among the parties,
21 including, without limitation, all issues or claims arising out of, relating to, in
22 connection with or incident to this Agreement and any transaction it
23 contemplates, whether such claims are based in tort, contract, or arise under
24 statute or in equity. The parties acknowledge and agree that this Agreement is
25 made and performed in the Commonwealth of Pennsylvania.

26 See Exhibit A RJN Page 14.

27 14. Pursuant to the terms of the Agreement, the DDC Group was obligated to deliver the full
28 amount of receivables purchased by the YesLender as follows: \$483.33 per business day until
the purchased receivables and all related fees under the terms of the Agreement are received in

1 full. See Exhibit A Merchant Capital Agreement RJN page 7.

2 15. On or about 2-14-2018, YesLender advanced to the Debtor, by wire transfer, the amount
3 of \$38,800 to Debtor's Chase Bank Account. See Declaration of Bret Dunlap at page 19.

4 16. On 02-14-2018 YesLender filed UCC Financing Statement filing number 18-7633476116
5 dated 02-14-2018 14:04; with the California Secretary of State. The Financing Statement was
6 amended on 02-22-2018 14:08; Filing Number 18-76346031. See Exhibit "B" UCC Financing
7 Statement at page 36.

8 ALL ASSETS AND PROCEEDS; ALL ACCOUNT(S) AND
9 PROCEEDS; ALL ACCOUNT RECEIVABLES AND PROCEEDS; ALL
10 CHATTEL PAPER AND PROCEEDS; ALL CONTRACT RIGHTS AND
11 PROCEEDS; ALL NEGOTIABLE INSTRUMENTS AND PROCEEDS; ALL
12 GENERAL INTANGIBLE (S) AND PROCEEDS; ALL INVENTORY AND
13 PROCEEDS; ALL VEHICLES AND PROCEEDS; ALL FIXTURES AND
14 PROCEEDS; ALL MACHINERY AND PROCEEDS; ALL EQUIPMENT
15 AND PROCEEDS

16 17. On or about 3-7-2018, Debtor bounces remittance for the 5th time. On or about 4-03-
17 2018, YesLender causes a Judgment to be entered by the Montgomery County Pennsylvania
18 court against Vyacheslav [Slava] Borisov personally and Debtor. Judgement entered in the
19 amount of \$63,483.35 See Exhibit "C" Montgomery County Court Judgment page 39 and
20 declaration of Bret Dunlap at page 15.

21 SISTER STATE JUDGMENT

22 18. On or about 06-13-2018, the Pennsylvania judgment was entered as a sister state
23 judgment in the Superior Court of Los Angeles; case Number BS173959. The Exhibit "D"
24 Notice of Entry of Judgement on Sister-State at page 41. Notice was filed on 06-15-2018 Exhibit
25 "F" LASC DOCKET BS173959 page 47.

26 19. A California judgment can be obtained simply by registering a sister state money
27 judgment with the specified superior court, thereby avoiding the necessity of bringing a
28 completely independent action in California. *Bank of America v. Jennett* (App. 3 Dist. 1999) 91
Cal.Rptr.2d 359, 77 Cal.App.4th 104.

1 20. Plaintiff has not moved to vacate the Sister State Judgment. Exhibit "F" LASC docket
2 BS173959, page 47. The time to move to vacate the sister state judgment has passed.

3 (b) Not later than 30 days after service of notice of entry of judgment
4 pursuant to Section 1710.30, proof of which has been made in the manner
5 provided by Article 5 (commencing with Section 417.10) of Chapter 4 of Title
6 5 of Part 2, the judgment debtor, on written notice to the judgment creditor,
7 may make a motion to vacate the judgment under this section. Cal. Civ. Proc.
Code § 1710.40 (West)

8 21. In the amended complaint Plaintiff cites California Code of civil procedure §1132
9 regarding the procedure for obtaining a judgment by confession under California Law.
10 YesLender's judgment was obtained in Pennsylvania, pursuant to Pennsylvania law and
11 procedure.

12 22. There is a question as to how a California court should honor a sister state judgment
13 where the sister state confession of judgment law differs from California regarding notice and
14 due process. Fortunately, there is California case law directly on point. We first look at
15 California Law then at how California law has been applied by California courts where the
original State's judgement was entered by confession of judgement.

16 23. Although rarely seen, California Law also provides for confession of judgement, if the
17 confessing party obtains a certification of independent review.

18 (a) A judgment by confession may be entered without action either for
19 money due or to become due, or to secure any person against
20 contingent liability on behalf of the defendant, or both, in the manner
21 prescribed by this chapter. Such judgment may be entered in
any superior court.

22 (b) A judgment by confession shall be entered only if an attorney
23 independently representing the defendant signs a certificate that the
24 attorney has examined the proposed judgment and has advised the
25 defendant with respect to the waiver of rights and defenses under the
26 confession of judgment procedure and has advised the defendant to
utilize the confession of judgment procedure. The certificate shall be

1 filed with the filing of the statement required by Section 1133. Code
2 Civ. Proc., § 1132

3 24. The California legislature amended §1132 following a 1978 decision by the California
4 Supreme Court.

5 In Isbell the court suggested that if the document confessing judgment
6 itself demonstrated a voluntary, knowing and intelligent waiver of due process
7 rights, then entry of judgment would be valid. (*Isbell v. County of Sonoma*,
8 *supra*, 21 Cal.3d at pp. 64–65, 70, In response to this observation, the
9 Legislature amended section 1132 to allow the entry of judgment by
10 confession if it is filed with a certificate signed by an attorney independently
11 representing the defendant indicating that the attorney has examined the
12 proposed judgment and has advised the defendant concerning the waiver of
13 rights and defenses under the confession of judgment procedure and has
14 advised the defendant to use that procedure. (§ 1132, subd. (b).) *Capital Trust,*
15 *Inc. v. Tri-National Development Corp.* (2002) 103 Cal.App.4th 824, 829

16 25. As to waiver, *Capital Trust* tells us that between sophisticated parties' strict compliance
17 with §1132 is not necessary for waiver of due process. The courts draw a distinction between
18 consumer lender transactions and transactions between sophisticated business entities. Where
19 the parties are equal bargaining partners a voluntary waiver can fairly be assumed.

20 *Isbell* recognizes that cases exist in which the parties' agreement itself
21 shows it was negotiated between equal bargainers and in which a voluntary
22 waiver of due process rights can fairly be assumed. (*Isbell v. County of*
23 *Sonoma, supra*, 21 Cal.3d at pp. 69–70, While the defendants' affidavit
24 acknowledging consultation with counsel does not strictly satisfy the attorney
25 affidavit requirements of section 1132, we conclude that given the context of
26 the case it is sufficient to allow the conclusion that Tri–National voluntarily
27 waived its rights to due process. *Capital Trust, Inc.* 831

28 26. As to whether the Debtor in Possession is a sophisticated party, given the extent, breadth
and complexity of their business plus the fact that they employ a full-time in-house attorney
there is no question the DIP is a sophisticated actor.

27. As to the actual waiver, the contract provides for confession of judgement and DIP acknowledged it had the opportunity to consult with counsel.

Seller further acknowledges and agrees that it has had the opportunity to consult with an attorney of Seller's own choosing with respect to this Warrant of Attorney for Confession of Judgment, and the rights waived by Seller herein. See Exhibit A RJN page 16.

28. Each Guarantor also acknowledge the opportunity to consult with counsel.

Each Guarantor further acknowledges and agrees that it has had the opportunity to consult with an attorney of Guarantor's own choosing with respect to this Warrant of Attorney for Confession of Judgment, and the rights waived by Guarantor herein. See Exhibit A RJN page 20.

29. The attack on the sister state California judgement because California procedure was not strictly applied in the Pennsylvania Judgment is moot. First, for all purposes the law of the Commonwealth of Pennsylvania is the law of this contract. Second, the agreement sufficiently comports with California Law to allow entry of the sister-state judgment. A sister state judgment is valid even where the original judgment was wrongly decided. "As long as the sister state court had jurisdiction over the subject matter and the parties, a sister state judgment is entitled to full faith and credit "even as to matters of law or fact erroneously decided." *Bank of America v. Jennett* (1999) 77 Cal.App.4th 104, 118

THE PENNSYLVANIA JUDGEMENT
CONFESSION OF JUDGMENT
COGNOVIT ACTIONEM CLAUSE

30. The Pennsylvania judgment was obtained by confession of judgment following the Debtors default on a purchase and sale agreement. The confession of judgment or cognovit actionem is an ancient legal device that is constitutionally valid and presently codified by several states, Pennsylvania and California included. The U.S. Supreme Court has held that parties to a contract may waive individual constitutional or Statutory Rights. In an opinion delivered by Mr. Justice Blackmun;

The cognovit is the ancient legal device by which the debtor consents in advance to the holder's obtaining a judgment without notice or hearing, and

possibly even with the appearance, on the debtor's behalf, of an attorney designated by the holder.² It was known at least as far **778 back as Blackstone's time. 3 W. *Blackstone, Commentaries* *397.³ In a case applying Ohio law, it was *177 said that the purpose of the cognovit is 'to permit the note holder to obtain judgment without a trial of possible defenses which the signers of the notes might assert.' *Hadden v. Rumsey Products, Inc.*, 196 F.2d 92, 96 (CA2 1952). And long ago the cognovit method was described by the Chief Justice of New Jersey as 'the loosest way of binding a man's property that ever was devised in any civilized country.' *Alderman v. Diament*, 7 N.J.L. 197, 198 (1824). Mr. Dickens noted it with obvious disfavor. *Pickwick Papers*, c. 47. The cognovit has been the subject of comment, much of it critical.⁴

Statutory treatment varies widely. Some States specifically authorize the cognovit.⁵ Others disallow it.⁶ *178 Some go so far as to make its employment a misdemeanor.⁷ The majority, however, regulate its use and many prohibit the device in small loans and consumer sales.⁸ *D. H. Overmyer Co. Inc., of Ohio v. Frick Co.* (1972) 405 U.S. 174, 176–178

31. The Pennsylvania Law for confession of judgment is well tested and remains valid. At the same time the U.S. Supreme Court took up *Overmyer*, the Court ruled on a matter regarding the Pennsylvania cognovit actionem statute. In an opinion also delivered by Mr. Justice Blackmun;

The cognovit system is firmly entrenched in Pennsylvania and has long been in effect there.

A confession of judgment for money 'may be entered by the prothonotary¹ . . . without the agency of an attorney and without the filing of a complaint, declaration or confession, for the amount which may appear to be due from the

¹ The Prothonotary is the elected civil clerk of the Court of Common Pleas and is responsible for recording all civil procedures before the court. This official signs and seals all writs and processes numerous other documents of the Court of Common Pleas.
<https://www.montcopa.org/97/Prothonotary>

face of the instrument,' Pa.Rule Civ.Proc. 2951(a), except that the action must be instituted by a complaint if the instrument is more than 10 years *194 old or cannot be produced for filing, 'or if it requires the occurrence of a default or condition precedent before judgment may be entered.' Rules 2951(c) and (d). In an action instituted by a complaint, the plaintiff shall file a confession of judgment substantially in a prescribed form, and the attorney for the plaintiff 'may sign the confession as attorney for the defendant' unless a statute or the instrument provides otherwise. Rule 2955. The prothonotary enters judgment 'in conformity with the confession.' Rule 2956.² The amount due, interest, attorneys' fees, and costs may be included by the plaintiff in the praecipe for a writ of execution. Rule 2957.

Swarb v. Lennox (1972) 405 U.S. 191, 193–194

32. The opinions in *Overmyer* and *Swarb* were sequentially delivered on the same day. The Pennsylvania case, *Swarb*, being the latter.

33. Pursuant to Pennsylvania law and procedure, YesLender LLC followed the procedures described by *Swarb* to obtain their judgment by confession against Vyacheslav Borisov and DDC Group, Inc. YesLender is informed and believes that Vyacheslav Borisov is the principal controlling shareholder of Plaintiff. On or about 02-09-2018 Vyacheslav Borisov signed a "Disclosure of Confession of Judgment" Exhibit "E" Disclosure for confession of judgement.

34. Plaintiff has not appealed the Pennsylvania judgement. The time for appeal has passed.

35. Plaintiff did not move to vacate the sister state judgment. The time to vacate has passed.

RES JUDICATA
ISSUE PRECLUSION
CLAIM PRECLUSION
FULL FAITH AND CREDIT

36. Yeslender asserts that its judgment is res judicata as to amount owed. The sister state California judgment enjoys equal dignity with a judgment originally entered in California pursuant to California Law. As discussed above, the choice of law is contractually established in the Commonwealth of Pennsylvania. The variance in the law of confession of judgment is not a factor. It is complicated; however, by walking thru the analysis brings us to a valid California Judgment with res judicata or issue preclusion or claim preclusion

1 37. As to the preclusion effect, there is no public policy exception to the full faith and credit
2 clause. In an 9-0 US Supreme Court opinion delivered by Justice Ginsburg with a concurring
3 opinions by Justice Kennedy and Justice Scalia the US Supreme court is clear that there is no
4 public policy exception to full faith and credit.

5 By Justice Ginsburg

6 A final judgment in one State, if rendered by a court with adjudicatory
7 authority over the subject matter and persons governed by the judgment,
8 qualifies for recognition throughout the land. For claim and issue preclusion
9 (res judicata) purposes, in other words, the judgment of the rendering State
gains nationwide force

10 As to judgments, the full faith and credit obligation is exacting. A final
11 judgment in one State, if rendered by a court with adjudicatory authority over
12 the subject matter and persons governed by the judgment, qualifies for
13 recognition throughout the land. *Citations omitted* A court may be guided by
14 the forum State's "public policy" in determining the law applicable to a
15 controversy, *Citations omitted*, but this Court's decisions support no roving
16 "public policy exception" to the full faith and credit due judgments, *Baker by*
Thomas v. General Motors Corp. (1998) 522 U.S. 222, 223

17 By Justice Kennedy

18 The majority, of course, is correct to hold that when a judgment is
19 presented to the courts of a second State it may not be denied enforcement
20 based upon some disagreement with the laws of the State of rendition. Full
21 faith and credit forbids the second State to question a judgment on these
22 grounds. There can be little doubt of this proposition. We have often
23 recognized the second State's obligation to give effect to another State's
24 judgments even when the law underlying those judgments contravenes the
public policy of the second State. *Baker by Thomas* 243

25 By Justice Scalia

1 The judgment that General Motors obtained in Michigan “ ‘does not carry
2 with it, into another State, the efficacy of a judgment upon property or persons,
3 to be enforced by execution. To give it the force of a judgment in another
4 State, it must be made a judgment there; and can only be executed in the latter
as its laws may permit *Baker by Thomas* 242

5 38. YesLender has a judgment properly obtained in Pennsylvania pursuant to Pennsylvania
6 law. YesLender has a sister state California judgment. The California judgment is enforceable
7 under California law. There is no public policy exception to the full faith and credit clause,
8 therefore the issues and claim preclusion effect of a California Judgment are in full force and
effect.

9
10 THE ROOKER-FELDMAN DOCTRINE
THERE IS NO SUBJECT MATTER JURISDICTION
11 THE COMPLAINT SHOULD BE DISMISSED, FRBP 12(b)(1)

12 39. At the 12-11-2018 hearing on the motion to dismiss the original complaint, this court
13 opined Rooker-Feldman doctrine did apply because the original complaint was not asking this
14 court to be a court of appeal. See Exhibit “G” Transcript 12-11-2018, RJN page 43. Now the
15 FAC does ask this court to void a Pennsylvania Judgment; arguing that California Law was not
16 followed to obtain the Pennsylvania judgment. It is difficult to see this request as anything less
than an attack on the Pennsylvania Judgement. Accordingly, we renew our Rooker-Feldman
argument on the FAC.

17 40. The amend complaint asks the court to review the Pennsylvania judgment for validity and
18 amount. On its face, this is a de facto appeal of the Pennsylvania judgment. The Rooker-
19 Feldman doctrine denies this court subject matter jurisdiction.

20 The *Rooker–Feldman* doctrine takes its name from *Rooker v. Fidelity Trust*
21 *Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923), and *District of*
22 *Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75
23 L.Ed.2d 206 (1983). Under *Rooker–Feldman*, a federal district court does not
24 have subject matter jurisdiction to hear a direct appeal from the final judgment
25 of a state court. The United States Supreme Court is the only federal court with
jurisdiction to hear such an appeal.

26 *Noel v. Hall* (9th Cir. 2003) 341 F.3d 1148, 1154–1155

1 41. Plaintiff alleges the amount of the judgment greatly exceeds the amount loaned. Plaintiff
2 asks this court to “determine the validity” of the liens. These quoted words are found in the
3 bankruptcy rules; however, the real substance of the prayer is for a determination that the
4 YesLender Pennsylvania judgment is invalid, or the judgment amount is incorrect. Plaintiff’s
5 prayer is a de facto appeal of the Pennsylvania Judgment.

6 To determine whether an action functions as a de facto appeal, we “pay
7 close attention to the *relief* sought by the *778 federal-court plaintiff.” *Bianchi*
8 *v. Rylaarsdam*, 334 F.3d 895, 900 (9th Cir.2003) (internal quotation marks and
9 citation omitted). “It is a forbidden de facto appeal under *Rooker–*
10 *Feldman* when the plaintiff in federal district court complains of a legal wrong
11 allegedly committed by the state court, and seeks relief from the judgment of
12 that court.” *Noel*, 341 F.3d at 1163; *see also Skinner v. Switzer*, — U.S. —, 131 S.Ct. 1289, 1297, 179 L.Ed.2d 233 (2011) (emphasizing that the *Rooker–*
13 *Feldman* doctrine is limited to cases “brought by state-court losers ... inviting
14 district court review and rejection of the state court’s judgments”) (internal
15 quotation marks, alteration, and citation omitted). *Cooper v. Ramos* (9th Cir.
16 2012) 704 F.3d 772, 777–778

17 42. Where the “de facto” appealed is intertwined with issues that may be properly before this
18 court, this court may not rule on those intertwined issues.

19 The premise for the operation of the “inextricably intertwined” test
20 in *Feldman* is that the federal plaintiff is seeking to bring a forbidden de facto
21 appeal. The federal suit is not a forbidden de facto appeal because it is
22 “inextricably intertwined” with something. Rather, it is simply a forbidden de
23 facto appeal. Only when there is already a forbidden de facto appeal in federal
24 court does the “inextricably intertwined” test come into play: Once a federal
25 plaintiff seeks to bring a forbidden de facto appeal, as in *Feldman*, that federal
26 plaintiff may not seek to litigate an issue that is “inextricably intertwined” with
27 the state court judicial decision from which the forbidden de facto appeal is
28 brought. As Judge Ebel held in *Facio v. Jones*, 929 F.2d 541, 543 (10th
Cir.1991), a federal district court plaintiff was barred by *Rooker–*

1 *Feldman* from seeking “to vacate and to set aside” a previously-entered state
2 court judgment because his federal suit was a forbidden de facto appeal. The
3 federal plaintiff was also forbidden to seek a declaratory judgment invalidating
4 the state court rule on which the state court decision relied,⁷ for the plaintiff’s
5 “request for declaratory relief [was] inextricably intertwined with his request to
6 vacate and to set aside the [state court] judgment.” *Id. Noel v. Hall* (9th Cir.
2003) 341 F.3d 1148, 1158

7 43. The intertwined issues here are the validity and amount of the judgments. The time to
8 appeal the Pennsylvania judgement is long past. The proper appellate jurisdiction was in
9 Pennsylvania. The Rooker-Feldman doctrine bars this California Bankruptcy court from
10 reviewing the Montgomery County Pennsylvania’s courts judgement.

11 44. Notwithstanding being in the wrong court at the wrong time, plaintiff’s legal theory is
12 flawed wherever reference is made to a “loan.” YesLender agreed to purchase future account
13 receivables. Plaintiff took an advance on the purchase price. There is no interest being charged.
14 There are no repayment terms. Payment is calculated by accounts received. YesLender owns
the accounts receivable.

15 45. There is significant risk in purchasing future account receivables, accordingly taking an
16 advance on the purchase price demands a significant discount off the purchase price. “Hard
17 money loans are loans too risky to meet the criteria of a bank or other conventional lender,
18 typically involving loan fees and interest rates substantially higher than those charged by
conventional lenders”. *In re Mastro* (Bankr. W.D. Wash. 2011) 465 B.R. 576, 585.

19 PLAINTIFF HAS FAILED TO STATE A CAUSE OF ACTION
20 COMPLAINT MUST BE DISMISSED FRCP 12(b)(6)

21 46. The first amended complaint allegations relevant to Yeslender are the attack on the
22 validity and amount of the Pennsylvania Judgment. Accordingly, as to YesLender the complaint
should be dismissed for failure to state a cause of action. FRCP 12(b)(6)

23 ALL ALLEGATIONS REGARDING YESLENDER LLC
24 MUST BE STRUCK FROM THE COMPLAINT
FRBP 12(f)

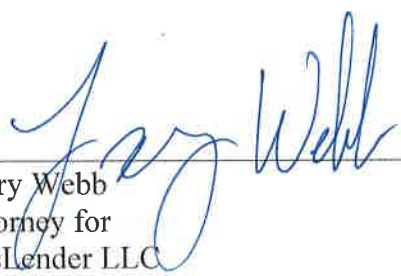
25 47. YesLender is one of four parties named in the complaint. Given that this court lacks
26 subject matter jurisdiction and the Plaintiff has failed to state a cause of action that is within the

1 Jurisdiction of this Court, YesLender asks the court to strike all reference to YesLender in the
2 complaint.

3 **WHEREFORE**, Plaintiffs prays for judgment on the Complaint as follows:
4

- 5 1. As to Yeslender, Dismiss all causes of action,
- 6 2. As to YesLender, strike all references in the complaint,
- 7 3. For such other relief as principles of equity may require, and the Court deems just
8 and proper.

9 Date 2/12/2019

10 
11 Larry Webb
12 Attorney for
13 YesLender LLC
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In re:

DDC GROUP INC.

Debtor(s).

CHAPTER: 11

CASE NUMBER: 2:18-bk-17029-BB

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

484 Mobil Ste 43
Camarillo, CA 93010

A true and correct copy of the foregoing document entitled (*specify*): DEFENDANT YESLENDER LLC'S NOTICE OF MOTION AND MOTION FOR ORDER TO DISMISS PLAINTIFFS FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF AND TO DETERMINE THE NATURE, EXTENT AND VALIDITY OF JUDGMENT LIENS MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 2/12/2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Richard W Esterkin richard.esterkin@morganlewis.com, sue.reimers@morganlewis.com
Michael F Frank mfrankatty@aol.com
Freddy Garmo freddy@garmolaw.com, vlopez@garmolaw.com
David M Gilmore dgilmore@gmlegal.net, lrenwick@gmlegal.net
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M. Jonathan Hayes jhayes@rhmfirm.com,
roksana@rhmfirm.com;rosario@rhmfirm.com;janita@rhmfirm.com;susie@rhmfirm.com;max@rhmfirm.com;priscilla@rhmfirm.com;pardi
s@rhmfirm.com;ross@rhmfirm.com;rebeca@rhmfirm.com
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United States Trustee (LA) ustprejon16.la.ecf@usdoj.gov
Larry D Webb Webblaw@gmail.com, larry@webblaw.onmicrosoft.com;r51666@notify.bestcase.com ☐ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL:**

On 2/12/2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Hon. Sheri Bluebond
U.S. Bankruptcy Court
255 E. Temple Street, Suite 1534
Los Angeles, CA 90012

☒ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on ____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

2/12/2019

Larry D. Webb 229344

Date

Printed Name

Signature